

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Rosemary A. Gilroy

v.

Civil No. 07-cv-74-JD

Ameriquist Mortgage Company, et al.

O R D E R

Proceeding pro se and in forma pauperis, Rosemary A. Gilroy brought suit against Ameriquist Mortgage Company ("Ameriquist"), Ameriquist Mortgage Company Mortgage Services, Inc. ("AMC Services"), and Citi Residential Lending, Inc. ("Citi"), alleging predatory lending practices in violation of New Hampshire law.<sup>1</sup> On February 20, 2009, the court granted summary judgment in favor of the defendants on Counts I, II, III, IV, and VI of Gilroy's amended complaint ("summary judgment order"), leaving Gilroy's claim for harassment in violation of New Hampshire Revised Statutes Annotated 358-C as the only remaining claim in this case.<sup>2</sup>

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<sup>1</sup>Gilroy added Citi as a defendant in an amended complaint filed on June 23, 2008, after she allegedly received notice from Citi that it held a mortgage on her property. The parties aver that Citi's parent corporation purchased AMC Services, Ameriquist's debt servicing corporation, and thereafter became Ameriquist's new loan servicer.

<sup>2</sup>The defendants did not move for summary judgment on the harassment claim.

Trial was scheduled for March 17, 2009. At a pretrial conference held on March 9, 2009, the court rescheduled the trial until May 11, 2009, at Gilroy's request. During the pretrial conference, Gilroy submitted an untimely motion for reconsideration of the court's order on summary judgment. The court accepted Gilroy's untimely filing. After reviewing her motion, the court denied it on March 16, 2009. Gilroy then submitted an amended, and untimely, motion for reconsideration, which the court reviewed and denied by order dated March 24, 2009.

Before the court is Gilroy's motion for leave to file an amended complaint, submitted on April 23, 2009, and Citi's motion for judgment on the pleadings, submitted on April 24, 2009.

I. Gilroy's Motion for Leave to File an Amended Complaint

Gilroy requests permission to file an amended complaint pursuant to Federal Rule of Civil Procedure 15, based upon her discovery of new legal theories against the defendants.

A scheduling order was issued by the court on February 28, 2008 (document no. 37), which set a December 5, 2008, deadline to amend the pleadings. By order dated October 6, 2008, the court extended all the deadlines within the scheduling order by thirty days. Accordingly, motions to amend the pleadings in this case

were due on or before January 5, 2009.<sup>3</sup> The deadline to amend the pleadings thus expired over three and one half months ago. Trial is scheduled to begin on May 11, 2009. Gilroy has not shown good cause for allowing her untimely motion, which asserts legal theories that have always been available to her, and which would require the trial to be rescheduled.<sup>4</sup> Her motion to amend her complaint is therefore denied.

## II. Citi's Motion for Judgment on the Pleadings

Citi moves for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). Citi notes that the only remaining claim in this case is for harassment and argues that this claim was not alleged against it in Gilroy's amended complaint.

On February 20, 2009, the court issued an order granting the defendants' motion for summary judgment on all counts, save Count V, which alleges a claim of harassment against Ameriquest and AMC Services. Since the remaining harassment claim was not brought against Citi, Citi's status as a party to this case was

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<sup>3</sup>Given that a scheduling order has issued in this case, Rule 15 does not apply. See O'Connell v. Hyatt Hotels, 357 F.3d 152, 154-55 (1st Cir. 2004).

<sup>4</sup>The court notes that it denied a similar untimely motion filed by the defendants in an order dated March 3, 2009.

terminated with the dismissal of the other claims on summary judgment. Citi's motion for judgment on the pleadings is therefore terminated.

Conclusion

For the foregoing reasons, Gilroy's motion to amend (document no. 115) is denied and Citi's motion for judgment on the pleadings (document no. 118) is terminated. There are no claims pending against Citi, which is no longer a defendant in this case.

SO ORDERED.

  
Joseph A. DiClerico, Jr.  
United States District Judge

April 28, 2009

cc: Rosemary A. Gilroy, pro se  
Thomas C. Tretter, Esquire